Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Frusetta | Analyst: Kristina North | Bill Number: AB 2208

Related Bills: See Legislative History | Telephone: 845-6978 | Introduced Date: February 24, 2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Employer Provided Health Care Credit/Farmworkers/CA Farmworker Health Care Protection Act of 2000/FTB Report to Legislature

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would provide a tax credit equal to 25% of the qualified expenses paid or incurred by a taxpayer for preventive health care, a health plan, or preventive care insurance provided to the taxpayer's employees who are qualified farmworkers.

EFFECTIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and apply to taxable or income years beginning on or after January 1, 2001, and before January 1, 2007.

LEGISLATIVE HISTORY

AB 1172 (Frusetta - 1999/2000) would have provided a tax credit equal to 25% of the qualified expenses paid or incurred by a taxpayer for preventive health care, a health plan, or preventive care insurance provided to employees who are qualified farmworkers. This bill failed to pass out of the first house by January 31 of the second year of the session.

AB 148 (Frusetta - 1997) and **AB 2520** (Prenter & Frusetta - 1998) proposed tax credits that were nearly identical to the credit proposed in this bill. AB 148 failed to pass out of the first house by January 31 of the second year of the session; AB 2520 was held in Assembly Appropriations.

SPECIFIC FINDINGS

Under federal and state laws an employer’s contribution to an employee accident or health plan is not includable in the employee’s gross income. Employers are allowed to deduct premium payments to employee accident or health plans as ordinary business expenses.

Existing state and federal laws provide various tax credits that can reduce a taxpayer’s tax liability dollar-for-dollar.

Current state law provides general rules for the division of credits between multiple taxpayers, husbands and wives, or partners. The general rules also provide that unused credits may continue to be carried over as specified even after the credit is repealed.

Board Position:			Department Director	Date
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Current federal and state laws do not currently provide credits for any health care costs. Prior **state law** would have provided a small-employer health coverage tax credit (SB 2260, Ch. 1521, Stats. 1988). However, the credit was repealed before becoming operative.

This bill would allow a tax credit equal to 25% of the amount paid or incurred by a taxpayer for “qualified expenses” for preventive health care provided to the taxpayer’s employees who are qualified farmworkers. The credit amount that could be claimed in any year would be limited to $50,000 per taxpayer for each taxable or income year.

This bill would define:

- “preventive health care” to include periodic health evaluations, immunizations, and medical services necessary and appropriate to treat and prevent the spread of a contagious disease.
- “qualified expenses” as amounts paid or incurred for services provided by or medicines or medical items prescribed or dispensed by a health care provider and amounts paid or incurred for providing a health plan or preventive care insurance.
- “qualified farmworker” as an individual who is a non-union, agricultural employee; not receiving, in whole or in part, publicly funded health care services as verified by the appropriate county office of health services, upon taxpayer request; a California resident; and an employee of the taxpayer, all of whose services for the taxpayer are provided in this state.

This bill would specify that no other credit or deduction would be allowed for the qualified expenses claimed for this credit. Any unused credit, including any credit amount above the $50,000 annual limitation, could be carried over for eight years. Since **this bill** does not specify otherwise, the general rules regarding the division of credits among taxpayers who share in the costs would apply.

Constitutional Consideration

This bill would require that a farmworker be a resident of California to make a taxpayer eligible for a credit. This requirement may be subject to constitutional challenge as discriminatory against nonresident employees who work in California. The credit already requires that farmworkers provide all of their services for the taxpayer within California, which ensures that the credit is targeted to California workers and does not raise constitutional concerns.

Policy Consideration

This bill would allow this credit only for taxpayers who employ “agricultural employees,” resulting in different tax treatment for similarly situated taxpayers employing workers in different occupations.

Implementation Considerations

- To ensure the author's intentions are achieved and to minimize disputes with taxpayers, a clearer definition of "preventive health care" and its components, including the term "contagious disease," is needed.

- A “health plan” and “preventive care insurance” are included under the definition of “qualified expenses,” but are not themselves defined. It is not clear which amounts paid or incurred for providing a health plan or preventive care insurance are eligible for the credit. Moreover, it is unclear whether the author intended that expenses paid to a health plan or for preventive care insurance be limited to those plans covering items defined as “preventive health care.” Definitions are needed for these terms to give clear guidance to taxpayers about what expenses are eligible for the credit.

- The bill limits the maximum allowable credit that can be claimed to $50,000 per taxpayer for each taxable or income year. However, where the "credit" in any one year exceeds the $50,000 credit limit that may be claimed, this bill would allow the excess to be carried over to reduce the taxpayer's tax liability for eight subsequent years. This carryover provision may be inconsistent with the language limiting the maximum credit that may be claimed to $50,000. In addition, it is unclear from the language limiting the credit to $50,000 each year whether the credit is intended to apply only to new expenditures subject to the credit or to limit carryover credits plus newly-claimed credits to this $50,000 amount. Staff is available to assist in drafting language to clarify the author's intent.

- This bill defines a qualified farmworker as an individual who, at the time qualified expenses are paid, is not receiving publicly funded health care services, "as verified" by the appropriate county office of health services. However, verification may be difficult for the taxpayer to obtain because 1) a county is not required to provide verification; and 2) a county may not have the information available regarding the receipt of publicly funded health care services by an otherwise qualified farmworker. Moreover, since medical information is subject to confidentiality rules, a public agency may not be able to release the information without specific authorization.

Department staff is available to assist in resolving these and any other concerns.

Technical Considerations

The language allowing carryover of the credit after repeal of the section is unnecessary and should be deleted since general tax law rules contain this provision.

The bill references clinics or health facilities licensed pursuant to Division 2 (commencing with Section 1220) of the Health and Safety Code. The reference needs a technical correction, because Division 2 begins with Section 1200, not Section 1220.

Also, Division 2 covers a variety of facilities, such as child care centers and residential facilities for the elderly. The author may wish to narrow the reference to the chapters specifically describing clinics and health facilities.

LEGISLATIVELY MANDATED REPORTS

The Franchise Tax Board is required to report to the Legislature, by January 1, 2006, the number and dollar value of the credits provided by this bill.

FISCAL IMPACT

Departmental Costs

With the resolution of the implementation considerations, this bill should not significantly impact the department's costs.

Tax Revenue Estimate

This bill is estimated to result in revenue losses as follows:

Revenue Impact of AB 2208 Beginning 1/01/2000 Assumed Enactment After 6/30/2000 **(In Millions)***			
	2000/2001	2001/2002	2002/2003
Personal Income Tax	-$.5	-$2.5	-$3.0
Bank & Corporation Income Tax	-$.5	-$2.5	-$4.5
Total	-$1.0	-$5.0	-$7.5

*After rounding.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Estimate Discussion

The revenue impact of this bill would depend upon the number of employers who would incur qualified health-related expenses for employees who are qualified farmworkers, the average costs of qualifying expenses, and the tax liabilities of employers.

For the analysis, it was assumed that employers who provide insurance would qualify for premium costs incurred and some segment of other employers would qualify for direct costs (immunization, etc.). According to a 1998 survey by the U.S. Department of Labor and University of California, 280,000 full-time equivalent non-unionized farm workers are employed in California. Second, the same survey shows that 5% of the 280,000 farmworkers are currently receiving health care insurance from employers.

For the insured group of employees (14,000), it is assumed that the average qualifying premium costs would be $150 per employee per month. For the uninsured group of employees (266,000), it is assumed that the number ineligible for publicly-funded health care and receiving some form of direct medical benefits from their employers (e.g., immunization, flu shots, etc.) is 20% (53,000), with an average benefit of $50 per employee.

It is assumed that on average 70% of the credit would be fully applied against available tax liabilities in any given year. These assumptions result in a revenue impact for 2000 on the order of $5 million.

BOARD POSITION

Pending.